

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

September 10, 2013

The Board of Agriculture, Trade and Consumer Protection met on September 10, 2013, beginning at 8:30a.m. for a tour of the Majestic Crossing Dairy Farm located at N5854 Meadowlark Road, Sheboygan Falls WI. The Board then held its official business meeting at the Blue Harbor Resort in the Salon B/C Room located at 725 Harbor Drive, Sheboygan, WI. The meeting was preceded by public notice as required by s. 19.84, Stats.

Call to Order

Board Chair Andy Diercks called the meeting to order at 11:02 a.m.

Members Present

Michael Dummer, Andy Diercks, Mark Schleitwiler, John Koepke, Dean Strauss, Nicole Hansen, Richard Cates, Miranda Leis were present. Dennis Badtke was absent.

Board Chair Remarks

Board Chair Andy Diercks thanked Dean Strauss for the tour earlier that morning of the Majestic Crossing Dairy Farm, which Dean Strauss co-owns and operates. Andy also appreciated the opportunity for the Board to be able to meet in Sheboygan.

Minutes

Motion

John Koepke made a motion to approve the July 16, 2013, Board minutes. Seconded by Mike Dummer. Motion approved unanimously.

Public Appearances

Paul Zimmerman, Executive Director of Government Relations for the Wisconsin Farm Bureau, appeared in support of the final adoption of the ATCP 50 rule. His organization appreciated all the public hearings and comments that were taken into consideration by the Department and the hard work by the staff to produce the rule. With NR 151 becoming effective in 2011, the Phosphorus Index and waste water performance standards being new, along with tillage set back, ATCP 50 was needed. The Wisconsin Farm Bureau appreciated the changes

made to the Phosphorus Index for pastures. They were supportive back in 2010, and will continue to work with farmers across the state to make sure they understand how the index works in relation to pastures.

Jim VandenBrook, Executive Director of the Wisconsin Land and Water Conservation Association, came in front of the Board in favor of ATCP 50. He felt the Department did a great job of holding public hearings and taking into account the comments and concerns of his membership. The final draft includes compromises on some of the major issues that were brought up including cost sharing on government land and non-agricultural practices, as well as including language identifying the need for the DATCP to work more closely with DNR on non-agricultural conservation planning.

ATCP 90, 91, 92, 113, and 136 (Final Draft)
Fair Packaging and Labeling; Selling Commodities by Weight, Measure or Count; Weights and Measure; Gasoline Advertising; Mobile Air Conditioners, Reclaiming or Recycling Refrigerant

Division Administrator Sandy Chalmers introduced Judy Cardin, Bureau Director of the Weights & Measures Bureau, and Kevin Leroy, Program & Policy Analyst, whom presented the final draft of the ATCP 90, 91, 92, 113 and 136 rule to the board for approval.

The final draft modifies the existing rules with a number of technical updates and minor changes. It does not represent any significant shift in the overall goal or policies of the existing rules.

Under ATCP 90, Fair Packaging and Labeling, the rule modified the definition of “Unreasonable shortage” to specifically reference NIST Handbook 133, “Checking the Net Contents of Packaged Goods” instead of a previously cited older version. A similar update is made to ATCP 91, Selling Commodities by Weight, Measure or Count, where a NIST Handbook 130, “Uniform Laws and Regulations in the Area of Legal Metrology and Engine Fuel Quality,” 2011 version is cited where it should reference the 2013 edition.

In ATCP 92, Weights and Measures, a clarification is made between vehicle scale and livestock scale regulation. The term “vehicle scale” does not apply to scales that are not in commercial service. Also, installing or relocating a vehicle scale requires a permit from DATCP; however there is no need for operators to request variances for livestock scales. The rule also updates a reference to the 2011 version of the NIST Handbook 44, “Specification, Tolerances and Other Technical Requirements for Weighing and Measuring Devices,” to reference the 2013 edition. Several “notes” were also updated to conform with changes to the DATCP web page.

The final draft revises ATCP 113, Gasoline Advertising, to link to fuel octane standards contained in Ch. SPS 348, Petroleum and Other Liquid Fuel Products, Wis. Adm. Code.

In the 2011 Wisconsin Act 187 changes were made in regards to DATCP authority to prohibit the sale of non-ozone-depleting refrigerants. Therefore, this rule updates ATCP 136, Mobile Air

Conditioners, Reclaiming or Recycling Refrigerant to reflect that only ozone-depleting refrigerants are prohibited from being sold in containers less than 15 pounds. Also, the Environmental Protection Agency (EPA) recently approved a new type of refrigerant (“HFO-1234fy”) and the rule updates the exiting previous existing rule to recognize the new product and associated specification and equipment standards.

The Board previously approved the hearing draft of this rule in May and subsequently the Agency held one public hearing in August on the hearing draft, with a written comment period open through August 21st. There were no attendees at the public hearing, however two people submitted written comments afterward. The Department modified the final draft rule slightly to incorporate several changes based on the public comments and minor technical changes suggested by the Rules Clearinghouse.

Motion

Miranda Leis made a motion to approve the final draft of the ATCP 90, 91, 92, 113 and 136 rule. This was seconded by Dean Strauss. Motion approved unanimously.

ATCP 50 Soil and Water Resource Management Program (Final Draft)

Sara Walling, Director of the Water Quality and Nutrient Management Section in the Division of Agricultural Resource Management, and Richard Castelnuevo, Resource Management and Engineering Chief, presented a powerpoint to the Board outlining the final draft of ATCP 50.

ATCP 50 is being revised primarily to implement the new and modified farm runoff control standards adopted by the DNR in 2011. These new and modified DNR standards (the “2011 DNR standards”) require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads (“TMDLs”). Under state law, DATCP is responsible for developing conservation practices and other methods to implement performance standards for farms. In most cases, farmers are not required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing.

Other changes in the rule are designed to improve administration of the SWRM program, including grants management, cost-sharing and establishing qualifications for engineering practitioners certified under the program.

Among other things, this rule will:

- Update the farm conservation standards in subch. II of ch. ATCP 50, and related definitions, including updates to the RUSLE 2 definition.
- Define a method for determining the distance (between 5 and 20 feet) for a tillage setback.
- Revise the soil erosion control standard to include pastures.

- Modify nutrient management planning requirements for pastures, creating a soil testing alternative and threshold for certain livestock stocking rates.
- Clarify the conservation compliance requirements for the farmland preservation program, including a phase-in for the farm runoff standards updated in NR 151.
- Simplify the manner by which engineering practitioners are certified.
- Update the technical and other standards for practices using state cost-share funds.
- Better support implementation of state performance standards on farms.

Motion

Michael Dummer made a motion to approve the final draft rule of ATCP 50. This was seconded by Dick Cates. Motion approved unanimously.

Implements of Husbandry Study Group (Report)

Rory Rhinesmith, Division Operations Director, and Dave Veith, Director of the Bureau of Highway Maintenance, both from the Department of Transportation, presented a powerpoint regarding the Implements of Husbandry (IoH) Study that was recently conducted and the recommendations generated from that report.

As Wisconsin's agriculture sector continues to grow, a sound road system is needed for our farmers to get their implements of husbandry (e.g. tractors, combines, self-propelled harvesting equipment, and manure tankers) between farm and fields. As innovations such as steerable axles, flotation tires, new tire designs and tracks have been implemented to accommodate our growing farms and improve field operations, there has also been an increase in the stress and strains on our current public roadways, public safety concerns, and infrastructure impacts.

In late 2012, an IoH Study Group, spearheaded by the Department of Transportation (DOT) and in partnership with the Department of Agriculture, Trade & Consumer Protection (DATCP) and other affected parties, was formed to:

- Examine the current statutory definition of "IoH" and propose changes to simplify compliance and enforcement.
- Identify and propose interim solutions and recommendations to deal with the continuing business needs of the agricultural industry.
- Familiarize transportation authorities and other interests to current field operations, practices, and challenges.
- Identify and analyze a comprehensive overview of each implement and its impact on public infrastructure that can be used in public policy discussions regarding size and weight.

State Nutrient Reduction Strategy Report

Russ Rassmussen, Deputy Administrator for the Department of Natural Resources – Division of Water, and Susan Sylvester, Director of the Water Quality and Water Shed Program with in DNR, presented the Wisconsin Nutrient Reduction Strategy report along with a powerpoint presentation.

Wisconsin's Nutrient Reduction Strategy is a broad overview of the nutrient management activities for both point sources and nonpoint sources in Wisconsin. This strategy is in part a response to two federal initiatives. The *Gulf Hypoxia Action Plan 2008*, developed and approved by representatives for a number of federal agencies and 12 states, calls for each agency and state in the Mississippi River Basin to develop a nutrient reduction strategy by 2013. It also calls for strategies to target watersheds contributing the greatest amount of nutrients and to focus implementation where both local water quality needs and Gulf of Mexico needs can be met. The second federal initiative came in March of 2011 when the Acting Assistant Administrator for Water for the U.S. Environmental Protection Agency (EPA), Nancy Stoner, released a memorandum encouraging EPA regions to work with states to develop state nutrient reduction frameworks. The memo identified and recommended eight elements essential to adequate state nutrient reduction programs.

This state Nutrient Reduction Strategy also meets the water quality needs within Wisconsin by eliminating water quality problems in local impaired streams and lakes, as well as in local drinking water. Within Wisconsin, about half of the streams and rivers do not meet water quality standards for phosphorus. Analysis of water quality data collected over more than three decades at 15 of 38 sites across the state show increases in nitrogen concentrations. In addition, many public drinking water wells have concentrations exceeding or approaching the drinking water quality standard for nitrates.

Board Member Reports

Mark Schleitwiler- Mark gave his final report for BelGioioso Cheese as he has recently retired. The renovation of the Byron plant in Fond du Lac County is coming to completion. Offices were occupied this week and hopefully within the next 60 days they would start making cheese. Weather has delayed the Freedom plant construction with the anticipated completion to be around the first of next year. The company itself has been growing along with the need for more milk which has been met by the farming community. BelGioioso recently had a field day with many visitors and representatives from state and local government attending. On the personal front, Mark took a vacation in the north woods recently.

Nicole Hansen- Nicole congratulated Mark on his recent retirement and thanked Dean for the tour earlier that morning. The cranberry crop industry as a whole will be fabulous this year, which can be good and bad as there will be too many barrels available for usage compared to the current need. The recent lack of moisture has not really had an effect on the cranberry crop as irrigation is typically used but it will be important for harvesting. Harvesting itself could start in

late September or even early October due to the late season. The Cranberry Growers had a very successful summer field day in Pittsville at Gardner Cranberry on August 14th as they had a great turnout in attendance.

John Koepke- John thanked Dean for a great tour and appreciated being able to showcase the diversity of the board. Southeastern Wisconsin has been doing very good even though it was a little too wet in spring and the rain held off in August. It has been a good summer for making milk and has been an easy summer for managing dairy cows. Family is doing well and the kids are back in school now. The Koepke's hosted two field days in August, one for NRCS Soil Health field day followed the next day by the 590 Nutrient Management Standards Team farm tour. Next week, John begins the township board budget season and can't help but correlate the IoH study and the costs to rebuild roads. John indicated that he sees both sides as agriculture played a role in building our states infrastructure and commerce by using the roads but there is also the need to protect those same roads as well.

Dean Strauss- Dean thanked everyone for coming to tour his farm. After the previous night's dinner, he appreciated getting to know everyone more and valued creating those new relationships. In his area, things are a little dry right now but things are good compared to how they could have turned out.

Dick Cates- Dick thanked Dean Strauss for the tour of his farm earlier that morning. He felt it was very inspiring to see the next generation of farmers positioning themselves as sustainable businesses by engaging the conversation with the public and recognizing their values while creating a strong business structure. He was very fortunate to have enough moisture on his farmland but was sad to see that many other places had not received that good luck. Dick just came back from visiting the Eastern Cape of South Africa where he spent 11 days working with the people there, listening to their requests and problems regarding livestock, pasture, and grasslands. Dick's family was honored to be recently nominated for the Leopold Conservation Award. He also thanked the Department for their cards and thoughts in the recent loss of his mother over the summer.

Miranda Leis- Miranda mentioned that she missed the last DATCP board meeting as she was in Montana at a family reunion visiting her uncle who owns a 38,000 herd cow/calf operation. After the previous Board meeting on May 14th, Miranda learned that her place of employment, Organic Valley, was on fire. The fire damaged the western third of the building and displaced 250 employees. On May 17th, Organic Valley began a very complicated rebuild plan which has taken up much of Miranda's time since. Personally, her summer has been busy with fairs and attending the Implements of Husbandry meeting in Cashton. Miranda stated she was very happy with the discussion and is encouraged to see that DATCP and DOT are working on this issue.

Mike Dummer- Mike thanked Dean Strauss for the farm tour and indicated it was a very well-run operation. West central Wisconsin has been very dry as of late. The harvest which originally looked like it may be late this year will now most likely need to be early because of the drought stressed corn. Mike was unsure of where his corn and bean yields would stand at this point. It's been a busy summer for him focusing on the farm work.

Andy Diercks- Andy thanked Dean for the great tour and indicated it was nice to be able to get the board together socially and to a field meeting. Andy has been busy lately with many tours, hosting the Gaylord Nelson Institute grad students and a Chinese group from the International Crane Foundation. The DNR water leadership team was also out at the farm for several hours, which presented a good opportunity for them to see how the farm manages their high capacity well and the challenges it presents to the industry. Harvest has been underway for close to 40 days and most of the state will start storage later in the week.

Deputy Secretary's Report

Deputy Secretary Jeff Lyon reported that Secretary Ben Brancel and Federal Liaison Matt Tompach are currently representing the Agency at the National Association of State Departments of Agriculture (NASDA) conference in North Carolina.

In a recent personnel change, former Division of Agricultural Development Administrator, Mike Powers, took an opportunity to work for Wisconsin Housing Economic Development Authority (WHEDA) in their economic development area working on their agriculture portfolio. Mike will be a great asset to WHEDA and will assist the Agency and WHEDA with discussions about their loan programs. DATCP will be working on finding a replacement for the Administrator position in the near future.

Deputy Secretary Lyon passed out a report from the National Agricultural Statistics Service (NASS), updating the board on the August crop reduction report, milk production, August prices received, farm real estate values, small grain summary and the crop progress report as of September 1st. He also informed the board that beginning in October 2013, NASS would be reinstating the quarterly milk production report, a report which had been previously discontinued earlier in the year due to the federal sequestration.

Deputy Secretary Lyon hoped the Board enjoyed the presentations and hearing more about DATCP's work with other Agencies. On September 12th, Jeff will be joining the IoH study group to review all additional comments regarding the study. He stressed the importance of contacting legislators as they will be the next step in implementing any changes.

The next board meetings for November and December will be held in Madison. The board will meet the new Alice in Dairyland and review several rule documents affecting: Dairy Farms, Meat and Meat Food Products, Fertilizer and Related Products, Tank and Petroleum Inspection, and Mobile Air Conditioners. The tentatively planned lab tour for the Board has been pushed back to next year due to a delay with the fire suppression system.

Future Schedule and Agenda Items

The Board is scheduled to meet on November 13th in Madison. Board Member John Koepke requested to receive an update on interstate meats at the next board meeting. Board Chair Andy Diercks also asked for an update on the Food Safety Modernization Act (FSMA) as well.

Adjournment

By unanimous consent, the Board adjourned at approximately 3:51pm.

Andy Diercks, Board Chair

John Koepke, Secretary